

IN THE INCOME TAX APPELLATE TRIBUNAL  
"D" BENCH, MUMBAI  
BEFORE SHRI B.R. BASKARAN (AM) & SHRI RAM LAL NEGI (JM)

I.T.A. NO. 1024/MUM/2014  
(Assessment Year 2009-2010)

ACIT – 19(2), Mumbai	Vs.	M/s. Reliance Capital Partners 3 <sup>rd</sup> floor, Reliance Energy Centre, Santa Cruz (E), Mumbai 400 055.
(Appellant)	..	(Respondent)

PAN No.AAIFR9553P

Assessee by :	Shri Jitendra Sanghavi
Department by :	Shri B.S. Bist (Sr. DR)
Date of Hearing :	01.03.2016
Date of Pronouncement :	01.03.2016

ORDER

PER B.R. BASKARAN, AM :-

The revenue has filed this appeal challenging the order dated 17.12.2013 passed by Ld CIT(A)-18, Mumbai for assessment year 2009-10, wherein he has deleted the disallowance of Rs.1.27 crores made by the assessing officer out of expenses claimed as professional fees.

2. The facts relating to the issue are set out in brief. The assessee is a partnership firm and is engaged in the business of trading in Paintings and investments. It filed its return of income declaring a total loss of Rs.1.66 crores. During the course of scrutiny proceedings, the AO noticed that the assessee has paid a sum of Rs.1,92,65,256/- as professional fee to a person named Shri Aditya Mitra Anand and had

also deducted TDS therefrom. It was submitted that the assessee had utilised his services in the field of authentication and valuation of paintings. The AO conducted enquiries with that person, who initially declared that he has received a sum of Rs.29,75,000/- only. But when the TDS certificate was pointed out to him, he admitted his mistake in declaring a wrong figure. Thereafter, the AO issued summons to Shri Aditya Mitra Anand and examined him. The AO also recorded a statement from him on 04.11.2011. The AO noticed that Shri Aditya Mitra Anand has utilised services of another agency M/s First Canvass in connection with the authentication and valuation purposes. The AO also noticed that Shri Aditya Mitra Anand was carrying on other businesses also and he was also a director in a company named M/s Cimit Tech India Pvt Ltd. The AO took the view that M/s Cimit Tech India Pvt Ltd is a group company of the assessee. The AO further took the view that Shri Aditya Mitra Anand does not have expertise in the field, since he has used the services of M/s First Canvass for the valuation purpose. Accordingly the AO took the view that the professional fee paid to him is excessive and unreasonable. Accordingly the AO allowed professional fees to the extent of Rs.37,97,768/- and disallowed the remaining amount.

3. In the appellate proceedings before Ld CIT(A), the assessee contended that M/s Cimit Tech India Pvt Ltd is not a group company and neither the said company nor Shri Aditya Mitra Anand fall in the category of persons specified in sec. 40A(2)(b) of the Act. It was further contended that the payment of professional fees was a commercial decision taken by the assessee out of commercial expediency and the amount was paid as per the terms agreed to between the parties. Accordingly, it was contended that the AO should

not sit in the arms chair of the assessee and decide as to what expenditure has to be incurred by the assessee. The assessee also placed reliance on the following case laws in support of its contentions:-

- (a) CIT Vs. Walchand and Co. (P) Ltd (65 ITR 381)(SC)
- (b) J.K. Woollen Manufacturers Vs. CIT (72 ITR 612)(SC)
- (c) Aluminium Corporation of India Ltd Vs. CIT (86 ITR 11)(SC)
- (d) CIT Vs. Oracle India Pvt Ltd (11 Taxmann.com 139)(Delhi)
- (e) J.K. Industries Ltd Vs. CIT (11 Taxmann.com 72)(Cal)
- (f) Jamshedpur Motor Accessories Stores Vs. CIT (95 ITR 664)(Patna)
- (g) CIT Vs. Shree Panchaganga Sahakari Sakhar Karkhana (118 Taxmann 122)(Bom)

4. The Ld CIT(A) was convinced with the contentions of the assessee and accordingly directed the AO to delete the disallowance made by him. Aggrieved, the revenue has filed this appeal before us.

5. We heard the parties and perused the record. The Ld D.R strongly supported the order passed by the AO and the Ld A.R reiterated the contentions made before the tax authorities. The AO has taken the view that one of the companies, in which Shri Aditya Mitra Anand is a director, is a group company of the assessee and accordingly tried to establish a case that the payment of professional fee was made to a known person at an excessive figure. The said observations of the AO have been strongly refuted by the assessee by submitting that neither Shri Aditya Mitra Anand nor the company in which he is a director can be treated as specified persons listed out in sec. 40A(2)(b) of the Act. There should not be any doubt that the

Income tax Act requires that the question as to whether an expenditure is excessive or unreasonable has to be examined in respect of payments made to persons specified in sec.40A(2)(b) of the Act. In the instant case the submission of the assessee that Shri Aditya Mitra Anand is not a person specified in sec. 40A(2)(b) has not been controverted. Hence the question of application of provisions of sec. 40A(2)(a) does not arise.

6. Accordingly, the expenditure in question is required to be examined in accordance with the conditions specified in sec. 37(1) of the Act. We notice that the assessing officer has not doubted about the satisfaction of the conditions specified in sec. 37(1) of the Act. It is fortified by the fact that the AO himself has partly allowed the claim. The AO was not satisfied with the reasonableness of the expenditure. The main reason cited by the AO in this regard was that Shri Aditya Mitra Anand has utilised the services of M/s First Canvass and accordingly the AO has inferred that the services were actually rendered by M/s First Canvass to the assessee. In this regard, the Ld A.R submitted that it is quite common for any professional to avail assistance services from any other professional. He further submitted that availing of professional services is a prevailing commercial practice and hence the AO was not justified in taking adverse inference against the assessee. It is pertinent to note that the assessing officer has drawn such kind of adverse inferences without examining M/s First Canvass and also without questioning Shri Aditya Mitra Anand in this regard. It is a well settled proposition that the AO cannot be make any addition out of suspicion and inferences. As submitted by Ld A.R, it is quite common for any professional to avail the services of another professional while executing his professional assignment. Hence the

services of M/s First Canvass availed by Shri Aditya Mitra Anand, in our view cannot be used by the AO to question the quantum of payment. It is also pertinent to note that the agreement is between the assessee and Shri Aditya Mitra Anand and the assessee shall normally expect the quality professional services from him, i.e., any businessmen shall not be bothered as to how the professional assignment is executed so long as they were satisfied with the quality of service.

7. The Id A.R also contended that the commercial decisions taken out of business/commercial expediency should be appreciated by the AO and he should not enter into the shoes of the assessee to question such kind of commercial decisions. We find merit in the said contentions of the assessee. The various case laws cited before the Ld CIT(A), which are listed supra, bring out the principles that one has to see whether the expenditure was incurred wholly and exclusively for the purpose of business and the reasonableness of expenditure has to be judged from the point of view of businessmen. It has also been held that if an expenditure has been incurred out of commercial expediency, then it cannot be disallowed. In support of these propositions, we may refer to the decision rendered by the Hon'ble Bombay High Court in the case of CIT Vs. Shree Panchaganga Sahakari Sakhar Karkhana Ltd (118 Taxman 122)(Bom). Identical views have been expressed by various courts in the decisions listed above.

8. As noticed earlier, the assessing officer has not doubted about the genuineness of the expenditure, but was suspicious about the reasonableness of the expenditure. However, since the expenditure has been incurred by the assessee out of commercial expediency and since the payments have been made by the assessee in accordance

with the agreed terms, it is not correct on the part of the AO to question the correctness of the decision taken by the assessee out of commercial expediency. Accordingly, we are of the view that the Ld CIT(A) was justified in deleting the impugned disallowance.

9. In the result, the appeal filed by the revenue is dismissed.

Order has been pronounced in the Open Court on 01.03.2016.

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 01/03/2016

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Copy of the Order forwarded to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A)
- 4) CIT
- 5) DR, ITAT, Mumbai
- 6) Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai